

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2012-32

KMJ/CORBIN & COMPANY, LLP
555 Anton Blvd., Suite 1000
Costa Mesa, CA 90626

Certified Public Accountancy Partnership
Certificate No. 6605,

KENDALL GLADE MERKLEY
1570 Canyon Meadows Lane
Glendora, CA 91740

Certified Public Accountant Certificate No.
53860,

ANTHONY JOSEPH PRICE
10132 Merrimac Drive
Huntington Beach, CA 92646

Certified Public Accountant Certificate No.
82793,


Respondents.

DECISION AND ORDER AS TO KMJ/CORBIN & COMPANY, LLP

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter as to KMJ/Corbin & Company, LLP.

This Decision shall become effective on March 3, 2013.

It is so ORDERED February 1, 2013.



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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Attorney General of California
2 JAMES M. LEDAKIS
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10 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **KMJ/CORBIN & COMPANY, LLP**

14 555 Anton Blvd., Suite 1000
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16 Certificate No. 6605,

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19 Certified Public Accountant Certificate No.
53860,

20 **ANTHONY JOSEPH PRICE**

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22 Certified Public Accountant Certificate No.
23 82793,

24 Respondents.

Case No. AC-2012-32

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER AS TO
KMJ/CORBIN & COMPANY, LLP**

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1 In the interest of a prompt and speedy settlement of this matter, consistent with the public
2 interest and the responsibility of the California Board of Accountancy ("CBA" or "Board") of the
3 Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement
4 and Disciplinary Order which will be submitted to the CBA for approval and adoption as the final
5 disposition of the Accusation as to KMJ/Corbin & Company, LLP.

6 PARTIES

7 1. Patti Bowers ("Complainant") is the Executive Officer of the California Board of
8 Accountancy. She brought this action solely in her official capacity and is represented in this
9 matter by Kamala D. Harris, Attorney General of the State of California, by Ron Espinoza,
10 Deputy Attorney General.

11 2. KMJ/Corbin & Company, LLP ("Respondent" or "KMJ") is represented in this
12 proceeding by Stephen J. Tully, Esq., whose address is: Garrett & Tully, 4165 E. Thousand Oaks
13 Blvd., Suite 201, Westlake Village, California, 91362. KMJ is acting in this proceeding through
14 its authorized partner, Mike Faddoul, and he has been designated and authorized by KMJ to enter
15 into this agreement on behalf of the firm (hereafter, "Authorized Representative").¹

16 3. On or about October 18, 2002, the Board issued Certified Public Accountancy
17 Partnership Certificate No. 6605 to Respondent KMJ/Corbin & Company, LLP.² The license was
18 in full force and effect at all times relevant to the charges brought in Accusation No. AC-2012-32
19 and will expire on October 31, 2014, unless renewed.

20 JURISDICTION

21 4. Accusation No. AC-2012-32 was filed before the California Board of Accountancy,
22 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
23 and all other statutorily required documents were properly served on Respondent on
24 December 27, 2012. Respondent timely filed its Notice of Defense contesting the Accusation.

25 ¹ Mr. Faddoul is not otherwise involved in these proceedings and was not personally
26 involved in the circumstances which gave rise to the Accusation in this matter.

27 ² The terms "Partnership Certificate" and "license" refer to the authority granted to
28 Respondent by the CBA to practice accountancy as a partnership in California, and the terms are
used interchangeably herein.

1 5. A copy of Accusation No. AC-2012-32 is attached as Exhibit A and incorporated
2 herein by reference.

3 ADVISEMENT AND WAIVERS

4 6. Respondent through its Authorized Representative has carefully read, fully discussed
5 with counsel, and understands the charges and allegations in Accusation No. AC-2012-32.

6 Respondent through its Authorized Representative has also carefully read, fully discussed with
7 counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8 7. Respondent is fully aware of its legal rights in this matter, including the right to a
9 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
10 the witnesses against it; the right to present evidence and to testify on its own behalf; the right to
11 the issuance of subpoenas to compel the attendance of witnesses and the production of
12 documents; the right to reconsideration and court review of an adverse decision; and all other
13 rights accorded by the California Administrative Procedure Act and other applicable laws.

14 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
15 every right set forth above.

16 CULPABILITY

17 9. Respondent admits the truth of each and every charge and allegation in Accusation
18 No. AC-2012-32.

19 10. Respondent agrees that its Partnership Certificate is subject to discipline, and it agrees
20 to be bound by the CBA's probationary terms as set forth in the Disciplinary Order below.

21 RESERVATION

22 11. The admissions made by Respondent herein are only for the purposes of this
23 proceeding, or any other proceedings in which the California Board of Accountancy or other
24 professional licensing agency is involved, and shall not be admissible in any other criminal or
25 civil proceeding.

26 CONTINGENCY

27 12. This stipulation shall be subject to approval by the California Board of Accountancy.
28 Respondent understands and agrees that counsel for Complainant and the staff of the California

1 Board of Accountancy may communicate directly with the CBA regarding this stipulation and
2 settlement, without notice to or participation by Respondent or its counsel. By signing the
3 stipulation, Respondent's Authorized Representative understands and agrees that KMJ may not
4 withdraw its agreement or seek to rescind the stipulation prior to the time the CBA considers and
5 acts upon it. If the CBA fails to adopt this stipulation as its Decision and Order, the Stipulated
6 Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall
7 be inadmissible in any legal action between the parties, and the CBA shall not be disqualified
8 from further action by having considered this matter.

9 13. The parties understand and agree that copies of this Stipulated Settlement and
10 Disciplinary Order, including the signatures thereto, shall have the same force and effect as the
11 originals.

12 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
13 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
14 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
15 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
16 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
17 writing executed by an authorized representative of each of the parties.

18 15. In consideration of the foregoing admissions and stipulations, the parties agree that
19 the CBA may, without further notice or formal proceeding, issue and enter the following
20 Disciplinary Order:

21 **DISCIPLINARY ORDER**

22 **IT IS HEREBY ORDERED** that Certified Public Accountancy Partnership Certificate
23 No. 6605 issued to Respondent KMJ/Corbin & Company, LLP, is revoked. However, the
24 revocation is stayed and Respondent is placed on probation for three (3) years on the following
25 terms and conditions.

26 **1. Obey All Laws**

27 Respondent shall obey all federal, California, other states' and local laws, including those
28 rules relating to the practice of public accountancy in California.

1 **2. Cost Reimbursement**

2 Respondent shall reimburse the CBA a sum not to exceed \$50,000 for its investigation and
3 prosecution costs of this matter, including those costs of probation monitoring. Respondent shall
4 reimburse the CBA \$29,163 for its current investigation and prosecution costs within thirty (30)
5 days of the date the CBA's decision is final. In addition, the CBA will periodically present
6 Respondent with a certified statement of costs to date, including additional costs incurred during
7 probation, and Respondent shall pay those costs to the CBA within thirty (30) days thereafter. If
8 costs are billed after the completion of the probationary period, the obligation to pay the costs
9 shall continue, but the probation shall not be extended thereby. Any costs owed hereunder,
10 exclusive of costs of probation monitoring, shall be reduced by any payments made by co-
11 Respondents to Accusation No. AC-2012-32, Kendall Glade Merkley and Anthony Joseph Price.

12 **3. Submit Written Reports**

13 Respondent shall submit, within ten (10) days of completion of the quarter, written reports
14 to the CBA on a form obtained from the CBA. The Respondent shall submit, under penalty of
15 perjury, such other written reports, declarations, and verification of actions as are required. These
16 declarations shall contain statements relative to Respondent's compliance with all the terms and
17 conditions of probation. Respondent shall immediately execute all release of information forms
18 as may be required by the CBA or its representatives. Respondent shall also comply with all
19 requirements imposed by the "Order Instituting Public Administrative and Cease-and-Desist
20 Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule
21 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial
22 Sanctions and a Cease-and-Desist Order" issued by the United States Securities and Exchange
23 Commission (SEC) on September 13, 2010, and report such compliance to the CBA in its
24 quarterly reports.

25 **4. Personal Appearances**

26 Respondent shall, during the period of probation, appear in person through an authorized
27 representative at interviews/meetings as directed by the CBA or its designated representatives,
28 provided such notification is accomplished in a timely manner.

1 **5. Comply With Probation**

2 Respondent shall fully comply with the terms and conditions of the probation imposed by
3 the CBA and shall cooperate fully with representatives of the California Board of Accountancy in
4 its monitoring and investigation of the Respondent's compliance with probation terms and
5 conditions.

6 **6. Practice Investigation**

7 Respondent shall be subject to, and shall permit, a practice investigation of the
8 Respondent's professional practice. Such a practice investigation shall be conducted by
9 representatives of the CBA, provided notification of such review is accomplished in a timely
10 manner.

11 **7. Comply With Citations**

12 Respondent shall comply with all final orders resulting from citations issued by the
13 California Board of Accountancy.

14 **8. Violation of Probation**

15 If Respondent violates probation in any respect, the CBA, after giving Respondent notice
16 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
17 was stayed. If an accusation or a petition to revoke probation is filed against Respondent during
18 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
19 probation shall be extended until the matter is final.

20 The CBA's Executive Officer may issue a citation under California Code of Regulations,
21 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
22 licensee on probation.

23 **9. Completion of Probation**

24 Upon successful completion of probation, Respondent's license will be fully restored.

25 **10. Dissemination of the Stipulated Settlement**

26 Within fifteen (15) days of the effective date of this Order, Respondent shall disseminate
27 this Stipulated Settlement and Disciplinary Order to all of its professional personnel officed in
28 California and shall confirm such dissemination in writing to the CBA.

1 **11. Peer Review**

2 During the period of probation, all audit, review, and compilation reports and work papers
3 shall be subject to peer review by a Board-recognized peer review program provider pursuant to
4 California Business and Professions Code Section 5076 and California Code of Regulations, Title
5 16, Division 1, Article 6, at Respondent's expense. The specific engagements to be reviewed
6 shall be at the discretion of the peer reviewer. The peer review shall be completed by
7 December 31, 2013, which time frame shall be incorporated as a condition of this probation.

8 Within 45 days of the peer review report being accepted by a Board-recognized peer review
9 program provider, Respondent shall submit to the CBA a copy of the peer review report,
10 including any materials documenting the prescription of remedial or corrective actions imposed
11 by the Board-recognized peer review program provider. Respondent shall also submit, if
12 available, any materials documenting completion of any or all of the prescribed remedial or
13 corrective actions.

14 **12. Audit Training**

15 Prior to December 31, 2013, Respondent shall provide two eight-hour training courses for
16 its accountants officed in California in the area of audits conducted under the Public Company
17 Accounting Oversight Board (PCAOB) Standards and Rules. Respondent shall provide the CBA
18 with a copy of the agenda and related materials for review at least two weeks prior to the training
19 sessions. Within thirty (30) days following each training session, Respondent shall provide the
20 CBA with a list of those personnel who attended the training. For those accountants who attend,
21 the 16 hours of training shall not be counted towards the CBA's continuing education
22 requirements for relicensing.

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DATED:

Mike Fadden

DATED:

1-7-63

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
submitted for consideration by the California Board of Accountancy of the Department of
Consumer Affairs.

Dated: *January 7, 2013*

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General

James M. Ledakis

RON ESPINOZA
Deputy Attorney General
Attorneys for Complainant

SD2012702944

Exhibit A

Accusation No. AC-2012-32

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 RON ESPINOZA
Deputy Attorney General
4 State Bar No. 176908
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Case No. AC-2012-32

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555 Anton Blvd., Suite 1000
13 Costa Mesa, CA 90626

A C C U S A T I O N

14 Certified Public Accountancy Partnership
Certificate No. 6605,

15 **KENDALL GLADE MERKLEY**
16 1570 Canyon Meadows Lane
Glendora, CA 91740

17 Certified Public Accountant Certificate No. 53860,

18 **ANTHONY JOSEPH PRICE**
19 10132 Merrimac Drive
Huntington Beach, CA 92646

20 Certified Public Accountant Certificate No. 82793,

21 Respondents.
22

23
24 Complainant alleges:

25 **PARTIES**

26 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
27 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs,
28 State of California.

2. On or about October 18, 2002, the California Board of Accountancy issued Certified Public Accountancy Partnership Certificate No. 6605 to KMJ/Corbin & Company, LLP (Respondent KMJ). The certificate was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2014, unless renewed.

3. On or about September 22, 1989, the California Board of Accountancy issued Certified Public Accountant Certificate No. 53860 to Kendall Glade Merkley (Respondent Merkley). The certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013, unless renewed.

4. On or about March 6, 2002, the California Board of Accountancy issued Certified Public Accountant Certificate No. 82793 to Anthony Joseph Price (Respondent Price). The certificate was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2014, unless renewed.

JURISDICTION

5. This Accusation is brought before the California Board of Accountancy (Board or CBA), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

6. Code section 5100 states:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

• • • •

(h) Suspension or revocation of the right to practice before any governmental body or agency.

• • • •

(I) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

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1 7. Code section 5116 states:

2 (a) The board, after appropriate notice and an opportunity for hearing,
3 may order any licensee or applicant for licensure or examination to pay an
4 administrative penalty as provided in this article as part of any disciplinary
5 proceeding or other proceeding provided for in this chapter.

6 (b) The board may assess administrative penalties under one or more
7 provisions of this article. However, the total administrative penalty to be paid by the
8 licensee shall not exceed the amount of the highest administrative penalty authorized
9 by this article.

10 (c) The board shall adopt regulations to establish criteria for assessing
11 administrative penalties based upon factors, including, but not limited to, actual and
12 potential consumer harm, nature and severity of the violation, the role of the person in
13 the violation, the person's ability to pay the administrative penalty, and the level of
14 administrative penalty necessary to deter future violations of this chapter.

15 (d) Administrative penalties assessed under this article shall be in
16 addition to any other penalties or sanctions imposed on the licensee or other person,
17 including, but not limited to, license revocation, license suspension, denial of the
18 application for licensure, denial of the petition for reinstatement, or denial of
19 admission to the licensing examination. Payment of these administrative penalties
20 may be included as a condition of probation when probation is ordered.

21 (e) All administrative penalties collected under this article shall be
22 deposited in the Accountancy Fund.

23 COST RECOVERY

24 8. Code section 5107, subdivision (a), states:

25 The executive officer of the board may request the administrative law
26 judge, as part of the proposed decision in a disciplinary proceeding, to direct any
27 holder of a permit or certificate found to have committed a violation or violations of
28 this chapter to pay to the board all reasonable costs of investigation and prosecution
of the case, including, but not limited to, attorneys' fees. The board shall not recover
costs incurred at the administrative hearing.

29 FACTS

30 9.. Respondent KMJ is an accounting firm registered with the Public Company
31 Accounting Oversight Board (PCAOB) and with offices in Costa Mesa and San Diego,
32 California. Respondent KMJ, through its certified public accountants, Respondents Merkley and
33 Price, conducted audits and reviews of the financial statements of Home Solutions of America,
34 Inc. (HSOA), from 2002 through the second quarter of 2007.

35 10. On or about September 13, 2010, the United States Securities and Exchange
36 Commission (SEC) issued an "Order Instituting Public Administrative and Cease-and-Desist

1 Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule
2 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial
3 Sanctions and a Cease-and-Desist Order" against Respondents. Respondents consented to the
4 entry of the Order against them, without admitting or denying the findings therein, except as to
5 the SEC's jurisdiction over Respondents and the subject matter of the proceedings, which they
6 admitted.

7 11. The SEC Order stated in pertinent part: "While supervising and conducting KMJ's
8 audits and reviews of HSOA's financial statements for 2004, 2005, 2006 and the periods ended
9 March 31 and June 30, 2007, Merkley (except as to 2007) and Price failed to adhere to PCAOB
10 Standards and Rules. In summary, Merkley and Price failed to: (i) obtain sufficient competent
11 evidential matter regarding bonuses, revenues, and cost of revenues with respect to KMJ's 2004,
12 2005, and 2006 audit engagements; (ii) comply with PCAOB Auditing Standard No. 3, *Audit*
13 *Documentation*; (iii) adequately plan the audit and properly supervise assistants in connection
14 with the 2006 engagement; and (iv) conduct reviews of interim financial information in
15 accordance with PCAOB Standards and Rules. Additionally, Merkley caused KMJ to issue
16 inaccurate audit reports in that he should have known that KMJ's audit reports were false because
17 they incorrectly represented that the audits were conducted in accordance with PCAOB standards
18 and that HSOA's financial statements were prepared in conformity with GAAP."

19 12. Based on the foregoing, the SEC Order found that: "KMJ, Merkley and Price engaged
20 in improper professional conduct pursuant to Rules 102(e)(1)(ii) and 102(e)(1)(iv)(B)(2) of the
21 Commission's Rules of Practice and Section 4C of the Exchange Act. Additionally, the
22 Commission finds that Merkley was a cause of HSOA's violations of Sections 13(a) and
23 13(b)(2)(A) of the Exchange Act, and Rules 13a-1 and 13a-13 promulgated thereunder and
24 caused KMJ's violation of Regulation S-X Rule 2-02(b)(1)."

25 13. As a result of these findings, the SEC issued its September 13, 2010, Order:
26 (1) censuring Respondent KMJ; (2) suspending Respondents Price (two years) and Merkley's
27 (three years) privilege of appearing or practicing before the SEC as accountants; and (3) requiring
28 Respondent Merkley to cease and desist from committing or causing any violations and any

1 future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act, Rules 13a-1 and 13a-13
2 thereunder, and Regulation S-X Rule 2-02(b)(1).

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Discipline by SEC Against KMJ)**

5 14. Respondent KMJ is subject to disciplinary action under Business and Professions
6 Code section 5100, subdivision (1), in that on or about September 13, 2010, the United States
7 Securities and Exchange Commission (SEC) censured Respondent, as alleged in paragraphs 9-13
8 above, which are hereby incorporated by reference.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Discipline by SEC Against Merkley)**

11 15. Respondent Merkley is subject to disciplinary action under Business and Professions
12 Code section 5100, subdivision (1), in that on or about September 13, 2010, the United States
13 Securities and Exchange Commission (SEC) issued an Order suspending Respondent's right to
14 appear or practice before it as an accountant, as well as ordering Respondent to cease and desist
15 from committing or causing any violations and any future violations of certain federal securities
16 laws, as alleged in paragraphs 9-13 above, which are hereby incorporated by reference.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Suspension of Right to Practice Before Governmental Body Against Merkley)**

19 16. Respondent Merkley is subject to disciplinary action under Business and Professions
20 Code section 5100, subdivision (h), in that on or about September 13, 2010, the United States
21 Securities and Exchange Commission (SEC), a governmental body or agency, issued an Order
22 suspending Respondent's right to appear or practice before it as an accountant, as alleged in
23 paragraphs 9-13 above, which are hereby incorporated by reference.

24 **FOURTH CAUSE FOR DISCIPLINE**

25 **(Discipline by SEC Against Price)**

26 17. Respondent Price is subject to disciplinary action under Business and Professions
27 Code section 5100, subdivision (1), in that on or about September 13, 2010, the United States
28 Securities and Exchange Commission (SEC) issued an Order suspending Respondent's right to

1 appear or practice before it as an accountant, as alleged in paragraphs 9-13 above, which are
2 hereby incorporated by reference.

3 **FIFTH CAUSE FOR DISCIPLINE**

4 **(Suspension of Right to Practice Before Governmental Body Against Price)**

5 18. Respondent Price is subject to disciplinary action under Business and Professions
6 Code section 5100, subdivision (h), in that on or about September 13, 2010, the United States
7 Securities and Exchange Commission (SEC), a governmental body or agency, issued an Order
8 suspending Respondent's right to appear or practice before it as an accountant, as alleged in
9 paragraphs 9-13 above, which are hereby incorporated by reference.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the California Board of Accountancy issue a decision:

13 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
14 Accountancy Partnership Certificate No. 6605 issued to KMJ/Corbin & Company, LLP;

15 2. Revoking or suspending or otherwise imposing discipline upon Certified Public
16 Accountant Certificate No. 53860 issued to Kendall Glade Merkley;

17 3. Revoking or suspending or otherwise imposing discipline upon Certified Public
18 Accountant Certificate No. 82793 issued to Anthony Joseph Price;

19 4. Ordering KMJ/Corbin & Company, LLP, Kendall Glade Merkley, and Anthony
20 Joseph Price to pay the California Board of Accountancy an administrative penalty pursuant to
21 Business and Professions Code section 5116;

22 5. Ordering KMJ/Corbin & Company, LLP, Kendall Glade Merkley, and Anthony
23 Joseph Price to pay the California Board of Accountancy the reasonable costs of the investigation
24 and enforcement of this case pursuant to Business and Professions Code section 5107;

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6. Taking such other and further action as deemed necessary and proper.

DATED: 12-27-12

Deanne Pearce for

PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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